

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 163 of 2006

(From original conviction and sentence of the Chief Magistrate's Court at Nyahururu in Criminal Case No. 4916 of 2005 – G.A. Mmassi [P.M.]

JOHN CHEBASKWONY CHEBOTIBIN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, John Chebaskwony Chebotibin was charged with Assault causing Actual bodily harm contrary to section 251 of the penal code. The particulars of the offence were that on 4th October 2005, at Kipkandule village, Mochongoi division of Baringo District, the appellant unlawfully assaulted Tarkok Baskwony thereby occasioning her actual bodily harm. The appellant was further charged with **Grievous harm contrary to Section 234 of the Penal Code**. The particulars of the offence were that on the 5th October 2005, in the same place, the appellant unlawfully did grievous harm (*maim*) to Kimoi Chebotibin by shooting her with an arrow. When the appellant was arraigned before court, he pleaded guilty to both charges and was convicted on his own plea of guilty and sentenced to a fine of Ksh.10,000/= or in default he was to serve 18 months imprisonment on the first count. On the second count, the appellant was sentenced to serve five years imprisonment. The appellant was aggrieved by his sentence and has appealed to this court.

In his petition of appeal, the appellant pleaded with the court to exercise leniency on him. He stated that he was drunk at the time he committed the offence. He further stated that he was a father of five children who were all in school. He was remorseful and regretted committing the offence. He stated that he had suffered mentally and physically since he was sentenced to serve the custodial sentence. At the hearing of the appeal, the appellant reiterated the contents of his petition of appeal and presented to the court a supplementary petition of appeal where he was basically reinforcing his argument that the court should treat him with leniency and reduce his sentence. Mr. Mugambi for the State opposed the appeal. He submitted that the appellant was sentenced to serve a lenient sentence in view of the offences that he had committed. He urged this court not to interfere with the sentence.

I have considered the plea by the appellant for reduction of sentence. I have also considered the submission made by Mr. Mugambi on behalf of the State in opposing the appeal on sentence by the appellant. The Court of Appeal in Samuel Githua Njoroge vs Republic CA Criminal Appeal No.53 of 2006 (Nakuru) (Unreported) held at page 2 as follows;

“The principles upon which an appellate court can interfere with the discretion of a trial [Magistrate] as regards sentence are well settled. The appellate court can only interfere where the trial [Magistrate] in assessing the sentence has acted on wrong principles or imposed a sentence which is manifestly inadequate or manifestly excessive. (See Diego vs Republic [1985] KLR 621.”

In the present appeal, the appellant has not stated that the trial magistrate had acted on the wrong principles of the law when he sentenced him to serve the said custodial sentence. In fact, the trial magistrate was extremely lenient considering the fact that the appellant had, apart from assaulting his

wife (*the complainant in the first charge*), shot his mother with an arrow (*the complainant in the second charge*). The appellant's mother had to be hospitalised because of the injury that she sustained on her chest after being shot with an arrow. An explanatory operation had to be undertaken to stop the bleeding in the chest cavity. It is clear that the appellant intended to cause grievous bodily harm to his mother. She is fortunate to be alive. Although the victims of the rage by the appellant were his close relatives, and further although the appellant has stated that he was drunk at the time, the fact that he injured his wife and mother on two consecutive days established that the appellant intended to harm his said relatives. This court will not interfere with the sentence by the trial magistrate's court.

The appeal by the appellant on sentence is hereby dismissed. The appellant shall serve the sentences that were imposed by the trial magistrate. I further make an order that the said sentences shall be served concurrently. The conviction and sentence of the trial magistrate is otherwise confirmed.

DATED at NAKURU this 31st day of OCTOBER 2007

L. KIMARU

JUDGE